

**STATEMENT OF
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BEFORE THE

**SUBCOMMITTEE ON AVIATION
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES**

HEARING ON

***The European Union Emissions Trading Scheme:
A Violation of International Law***

July 27, 2011

Good morning Chairman Mica, Chairman Petri, Ranking Member Rahall, Ranking Member Costello, and Members of the Subcommittee. Thank you for inviting me to testify today.

The European Union (EU) Emissions Trading Scheme, or ETS, is a very important issue for the U.S. Government and the U.S. aviation industry. This Committee's leadership has been instrumental in raising awareness about the legal and design issues of the EU ETS as the EU proposes to apply it to international aviation. As your efforts show, opposition to the unilateral imposition of ETS on foreign operators, including U.S. operators, is not limited to one branch of government or one political party. Opposition is shared throughout our government and across the political spectrum.

In January next year, U.S. aircraft operators will begin to incur liability for greenhouse gas emissions under the EU ETS. We strongly object, on both legal and policy grounds, to the proposed unilateral imposition of ETS on foreign operators.

This is the wrong way to pursue the right objective. The Administration strongly supports the goal of combating climate change through reductions in greenhouse gas emissions, including from the aviation sector. The U.S. aviation industry has made substantial progress over the last ten years in improving fuel economy and reducing emissions. However, we believe that the right way forward is a global solution built on strong domestic action, rather than a system imposed on us from outside.

To this end, the Department of Transportation is actively working domestically and with our international partners to reduce greenhouse gas emissions caused by aviation. We believe that the International Civil Aviation Organization (ICAO) should provide the framework to address international greenhouse gas emissions. Efforts to reduce greenhouse gases must be accomplished by constructive international negotiation and mutual agreement, not by the unilateral decision of one government.

To address our international commitments at ICAO with respect to aviation and climate change, the Department is undertaking a set of initiatives under the U.S. Next Generation Air Transportation System (NextGen) Plan, as well as working at ICAO to develop a meaningful carbon dioxide (CO₂) standard. We have set aspirational goals in our NextGen plan to improve aviation fuel burn and emissions performance by 2% a year and achieve carbon neutral aviation growth by 2020 from a 2005 baseline. To achieve this, we are working in partnership with industry to implement more efficient air traffic management, accelerate development of cleaner aircraft technology, and develop and deploy sustainable alternative fuels.

The good news is that we are building on a strong record of U.S. aviation fuel efficiency improvements and greenhouse gas emissions savings. Commercial aircraft operations in the United States have shown significant improvement in fuel efficiency and emissions. U.S. aviation emissions have barely grown since 1990 (up 5%), and U.S. aviation emissions have actually declined since 2000 (down 15% through 2009 while U.S. carriers have transported approximately 15% more passengers and cargo).

We believe that the EU's plan to include aviation in the EU ETS is undermining efforts to build an international consensus on how to best reduce aviation's greenhouse gas emissions. We saw that last fall at the ICAO Assembly and we see it from the reports of opposition to application of this EU legislation by countries from around the world.

Moreover, we have several major concerns with the EU ETS as applied to international aviation.

First, inclusion in the ETS of foreign operators is inconsistent with international aviation law and practice. As a legal matter, we consider the EU ETS Directive to be inconsistent with both the Chicago Convention and the U.S.-EU Air Transport Agreement.

Second, the EU has no transparent methodology or standards for its application of a provision that allows carriers from countries undertaking "equivalent measures" for reducing emissions to be exempted from the EU ETS. We believe this could foster discrimination and competitive distortions in the industry.

Third, contrary to EU assertions, work by ICAO has recognized a range of approaches for reducing greenhouse gas emissions and not exclusively endorsed any one measure.

Fourth, any money U.S. airlines pay to European treasuries is money that is not available to invest in new aircraft and equipment required under our NextGen plan. Moreover, despite public statements pledging ETS revenues as a source of climate mitigation funding, the EU ETS Directive imposes no requirement that revenues generated from the auction of ETS allowances be used to address climate change, nor are we aware of any commitments by any EU member state to dedicate ETS revenue for climate change purposes.

Finally, the EU ETS does not preclude EU member states from levying additional emissions-related charges or taxes, or maintaining existing levies. There are already countries, such as Austria, Germany and the U.K., that have done so. Accordingly, a U.S. air carrier forced to participate in the EU ETS could end up paying multiple times for the same ton of CO₂ emissions.

We discussed our concerns with our European counterparts at the Joint Committee of the U.S.-EU Air Transport Agreement last month in Oslo. During that meeting, we conveyed our serious policy and legal objections to the EU's planned inclusion of foreign operators in their ETS. European Commission representatives insisted that the ETS Directive will not be amended or delayed, and that the only way for U.S. carriers to be even partially exempted would be for the U.S. to demonstrate equivalent measures. The ambiguous responses of the EU to U.S. questions about potential discrimination and criteria for equivalence in possible EU exemptions for third countries only heightened our concerns.

We strongly believe that a collaborative international approach is the best way to reduce global greenhouse gas emissions and will continue to work actively for a global solution.

Thank you again for bringing attention to this important issue. I look forward to your questions.